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Delegations will find attached document COM(2022) 691 final.

Encl.: COM(2022) 691 final



Brussels, 25.10.2022
COM(2022) 691 final

SENSITIVE*

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on a status agreement between the European Union and Bosnia and Herzegovina on operational activities carried out by the European Border and Coast Guard Agency in Bosnia and Herzegovina

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

One of the tasks of the European Border and Coast Guard Agency (the ‘Agency’ or ‘Frontex’) is to cooperate with third countries in relation to the areas covered by the European Border and Coast Guard Regulation (Regulation (EU) 2019/1896) ‘including through the possible operational deployment of border management teams in third countries’¹. Specifically, the Agency, as part of the European Border and Coast Guard, is to ensure European integrated border management², one component of which is cooperation with third countries in the areas covered by the European Border and Coast Guard Regulation focusing in particular on neighbouring third countries and countries of origin or transit for irregular migration.³ The Agency may cooperate with the authorities of third countries competent in matters covered by the Regulation to the extent required for the fulfilment of its tasks⁴ and may carry out actions related to European integrated border management on the territory of a third country subject to the agreement of that third country.

Pursuant to Article 73(3) of Regulation (EU) 2019/1896, in circumstances requiring the deployment of border management teams from the European Border and Coast Guard standing corps to a third country where the members of the teams will exercise executive powers, a status agreement should be concluded by the Union with the third country concerned. Such a status agreement should be based on the model that the Commission has drawn up as required by Article 76(1) of said regulation. The Commission adopted this model on 21 December 2021⁵.

Bosnia and Herzegovina lies on the Western Balkans migration route, which sees significant irregular migration towards the core of the European Union from Asia Minor, through the Balkan Peninsula. Between January and August 2022, 87 190 irregular border crossings and attempts have been registered by Frontex at the European Union’s external borders on the Western Balkan route; 2 010 were registered at the border of Bosnia and Herzegovina with Montenegro and 7 324 at its border with Croatia. Since 2018, 87 097 migrants have been registered in Bosnia and Herzegovina, all of whom have received support funded by the European Union.

People in irregular movement remain targets of organised criminal groups engaged in people smuggling and are at great risk of human rights violations. The increase in irregular arrivals and ensuing rise in asylum applications are putting significant pressure on some European Union Member States, leading to the need for common, coordinated action at the Union level based on the principles of fair sharing of responsibility and solidarity enshrined in the Pact on Migration and Asylum⁶.

¹ Article 10(1)(u) of Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.

² Article 71(1) of Regulation (EU) 2019/1896.

³ Article 3(g) of Regulation (EU) 2019/1896.

⁴ Article 73(1) of Regulation (EU) 2019/1896.

⁵ Communication COM(2021) 829 - Model status agreement as referred to in Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.

⁶ [Migration and Asylum Package: New Pact on Migration and Asylum documents adopted on 23 September 2020 | European Commission \(europa.eu\)](#)

In 2017, the European Commission opened negotiations with Bosnia and Herzegovina for a status agreement on the basis of the previous European Border and Coast Guard Regulation (Regulation (EU) 2016/1624⁷). Negotiations were successfully finalised by the initialling of the draft status agreement by the Commission and Bosnia and Herzegovina in January 2019. However, the status agreement was not immediately signed and, in the meantime, Regulation (EU) 2016/1624 has been repealed and replaced by Regulation (EU) 2019/1896.

Given that Bosnia and Herzegovina is a neighbouring third country that remains an important country of transit for irregular migration to the European Union, the value of cooperation between the European Border and Coast Guard Agency and the relevant national authorities of Bosnia and Herzegovina remains as high as ever. A status agreement based on Regulation (EU) 2019/1896 would allow for the deployment of European Border and Coast Guard standing corps teams to Bosnia and Herzegovina's borders with countries that are not members of the European Union and thus support the country's national authorities' efforts to ensure that anyone entering the country does so in compliance with the relevant legislation.

EU-funded programmes

Since 2018, the European Union has provided more than EUR 140 million to Bosnia and Herzegovina either directly or through implementing partners to address the immediate needs of refugees, asylum-seekers and migrants and to help Bosnia and Herzegovina strengthen its migration management capacities. This support consists of EUR 125.85 million in IPA Special Measures and EUR 18.8 million in humanitarian assistance. In the context of programming IPA 2021 and 2022, three sources of funding are available to support migration management in Bosnia and Herzegovina: IPA 2021 Individual Measure on Migration Management (EUR 40 million over three years), IPA 2022 Individual Measure on Border Management (EUR 6.4 million) and IPA 2021 national budget lines (EUR 5 million).

Bosnia and Herzegovina has also received non-financial support, particularly expert advisory services, to aid the harmonisation of its legal and strategic frameworks with the European Union *acquis* and best standards and practices. Advisory support is provided through the Office of the European Union Special Representative in Bosnia and Herzegovina.

Existing bilateral agreements

Bosnia and Herzegovina has a readmission agreement with the European Union and its Ministry of Security has a working arrangement with the European Border and Coast Guard Agency; a roadmap with the European Union Asylum Agency is currently being implemented. Bosnia and Herzegovina is a party to the Police Cooperation Convention in Southeast Europe and has signed agreements on border crossings, local border traffic and on joint locations/joint border crossings with several of its neighbours. Bosnia and Herzegovina has also signed a readmission agreements with all the Western Balkan countries, Türkiye, Russia, Moldova and Pakistan whose practical implementation started in August 2022.

Situation of the Schengen associated countries

The present proposal builds upon the Schengen *acquis* in the field of management of the external borders. The Union has nevertheless no power to conclude a status agreement with

⁷ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1–76).

Bosnia and Herzegovina in a manner that binds Norway, Iceland, Switzerland or Liechtenstein. To ensure that border guards and other relevant staff sent by those countries to Bosnia and Herzegovina benefit from the same status as provided for in the future status agreement, a joint declaration attached to the status agreement should state the desirability that similar agreements be concluded between Bosnia and Herzegovina and each of those associated countries.

- **Consistency with other Union policies**

Reinforcing controls along the borders of Bosnia and Herzegovina will positively impact the management of the Union's external borders as well as the borders of Bosnia and Herzegovina itself. The conclusion of a status agreement would tie into the wider objectives and priorities for cooperation as set out in the European Union's Stabilisation and Association Agreement with Bosnia and Herzegovina⁸.

Bosnia and Herzegovina applied for EU membership in February 2016. The Commission adopted its Opinion⁹ on the EU membership application of the country in May 2019, identifying 14 key priorities for the country to fulfil in view of opening EU accession negotiations. Under key priority 8, Bosnia and Herzegovina needs to ensure effective coordination, at all levels, of border management and migration management capacity, and ensure the functioning of the asylum system. In October 2022, the Commission recommended that the Council grants Bosnia and Herzegovina the status of candidate country, on the understanding that a number of steps are taken, in line with the key priorities, including on migration management.¹⁰

The conclusion of a status agreement could also support the wider efforts and commitments of the European Union to further develop capabilities contributing to crisis response management and promoting convergence on foreign and security matters between the Union and Bosnia and Herzegovina.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this recommendation is Article 218(3) and (4) TFEU.

The competence of the European Union to conclude a status agreement is explicitly provided for in Article 73(3) of Regulation (EU) 2019/1896, which states '[i]n circumstances requiring the deployment of border management teams from the standing corps to a third country where the members of the teams will exercise executive powers, a status agreement [...] shall be concluded by the Union with the third country concerned'.

Pursuant to Article 3(2) of the Treaty on the Functioning of the European Union, the Union has exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union. Article 73(3) of Regulation (EU) 2019/1896 provides for a status agreement to be 'concluded by the Union with the third country concerned'. Consequently, the agreement to be negotiated and concluded with Bosnia and Herzegovina falls within the exclusive competence of the European Union. In accordance with Article 73(3) of the Regulation (EU) 2019/1896, the proposed status agreement will be based on the model agreement adopted by the Commission.

⁸ OJ L 164, 30.6.2015, p. 2–547.

⁹ SWD(2019) 222 final, COM(2019) 261 final.

¹⁰ Communication COM(2022) 528 final - 2022 Communication on EU Enlargement Policy.

- **Subsidiarity and proportionality**

The need for a common approach

A status agreement will allow for the deployment in Bosnia and Herzegovina of European Border and Coast Guard teams by the European Border and Coast Guard Agency, using all the possibilities offered by Regulation (EU) 2019/1896. Without such a tool, only bilateral deployments by Member States can be used to develop and implement European integrated border management and support Bosnia and Herzegovina in managing a significant number of migrants seeking to transit its territory. A common approach is therefore needed to better manage the borders of Bosnia and Herzegovina.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

As this will be a new agreement under Regulation (EU) 2019/1896, an evaluation or fitness check of an existing instrument under this Regulation cannot be carried out. Impact assessments are not required for the negotiation of status agreements, as there are no alternative policy options available to the Commission.

- **Fundamental rights**

In line with recital 88 of Regulation (EU) 2019/1896, the Commission will assess the fundamental rights situation relevant to the areas covered by the status agreement in Bosnia and Herzegovina and inform the European Parliament thereof.

The envisaged agreement will contain practical measures related to the respect of fundamental rights and shall ensure that fundamental rights are fully respected during activities organised on the basis of the agreement. The agreement will provide for an independent and effective complaints mechanism in accordance with the relevant provisions of Regulation (EU) 2019/1896 to monitor and ensure respect for fundamental rights in all the activities organised on the basis of the agreement.

- **Data protection**

The European Data Protection Supervisor shall be consulted on the provisions of the status agreement related to the transfer of data if those provisions differ substantially from the model status agreement.

4. BUDGETARY IMPLICATIONS

A status agreement in and of itself does not entail any financial implications. The actual deployment of border guard teams on the basis of an operational plan would entail costs borne by the budget of the Agency. Future operations under a status agreement will be financed through the Agency's own resources as provided for in the Union's annual budget cycle.

The Union contribution for the European Border and Coast Guard Agency already forms part of the Union's budget as laid out in the Council Conclusions to the Multiannual Financial Framework Agreement.¹¹

¹¹ [210720-euco-final-conclusions-en.pdf \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic-2019-1896-01.pdf)

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will ensure proper monitoring of the implementation of the status agreement.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on a status agreement between the European Union and Bosnia and Herzegovina on operational activities carried out by the European Border and Coast Guard Agency in Bosnia and Herzegovina

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) In circumstances requiring the deployment of border management teams from the standing corps of the European Border and Coast Guard to a third country where the members of the teams will exercise executive powers, Article 73(3) of Regulation (EU) 2019/1896¹² calls for a status agreement to be concluded by the Union with the third country concerned on the basis of Article 218 of the Treaty on the Functioning of the European Union.
- (2) Negotiations should be opened with a view to concluding an international agreement with Bosnia and Herzegovina on operational activities carried out by the European Border and Coast Guard Agency in Bosnia and Herzegovina.
- (3) This Decision constitutes a development of the provisions of the Schengen *acquis*, in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹³; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application,
- (4) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark⁷, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law,

¹² Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

¹³ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to open negotiations, on behalf of the Union, for a status agreement with Bosnia and Herzegovina on operational activities carried out by the European Border and Coast Guard Agency on the territory of Bosnia and Herzegovina.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with [name of the special committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*